

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

LANDON L. WASHINGTON,

Plaintiff,

-v-

C.O. JOHNSON, *Food Service Officer*, CAPT. SMART,
Area Supervisor, CITY OF NEW YORK,

Defendants.

22 Civ. 1440 (PAE) (GWG)

OPINION & ORDER

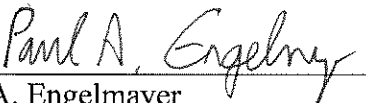
PAUL A. ENGELMAYER, District Judge:

On February 3, 2023, the Court received, by mail, the attached documents from *pro se* plaintiff Landon L. Washington (“Washington”). The documents were received after the Court filed its opinion and order adopting the Report and Recommendation (the “Report”) of the Honorable Gabriel W. Gorenstein, Magistrate Judge and granting defendants’ motion to dismiss. Dkt. 35. The documents include: (1) a letter from Washington, dated January 22, 2023, indicating that he wishes to respond to the motion to dismiss and object to the Report; (2) an inmate statement form by Washington, dated January 19, 2023, filing a grievance with the City of New York’s Department of Correction; and (3) a disposition form by the Office of Constituent and Grievance Services, dated January 20, 2023, stating that Washington’s complaint had been “substantiated” and forwarded to the Warden’s office for resolution.

The Court, having reviewed the materials, finds that they do not alter its decision to adopt the Report in its entirety and to dismiss Washington’s claims against the moving defendants. For one, the materials are untimely. The Report, which was filed on December 21, 2022, stated that the parties had “fourteen (14) days (including weekends and holidays) from service of this

Report and Recommendation to file any objections,” making the deadline for any objections January 4, 2023. Dkt. 33 at 7. Washington’s objections, dated 18 days later, are thus untimely. In any event, even if the attached documents were timely submitted, “[c]ourts do not generally consider new evidence raised in objections to a magistrate judge’s report and recommendation.” *Tavares v. City of New York*, No. 08 Civ. 3782 (PAE), 2011 WL 5877548, at *2 (S.D.N.Y. Nov. 23, 2011) (collecting cases). To the extent Washington asserts that there are ongoing violations or actionable conduct post-dating the conduct addressed in the Report, he is at liberty to pursue new claims in a separate action, upon exhaustion of his administrative remedies.

SO ORDERED.


Paul A. Engelmayer
United States District Judge

Dated: February 6, 2023
New York, New York

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East Elmhurst, NY 11370
22 Civ. 1440 (PAE) (GWG)

United States District Court
Southern District of New York
500 Pearl Street
New York, NY 10007

Plaintiff would like to respond to the motion filled by the defendant. My sufficient factual matter is stated in this report, by the City of New York Department of Correction, Office of Constituent and Grievance Services. I Landon Washington wont provide any false statements on the record. A resolution couldn't be reached when we accepted this matter as true because OCGS reviewed and investigated this matter. I find it necessary to address this issue of not having a religious service provided to me. This matter is unconstitutional, and on going. I would like to object the defendant's report and recommendation.



January 22, 2023

Respectfully




Landon Washington

ATTACHMENT - B-1

Please Complete Highlighted

		CITY OF NEW YORK - DEPARTMENT OF CORRECTION			
OFFICE OF CONSTITUENT AND GRIEVANCE SERVICES				Form: 7101R-A Eff.: 9/14/18 Ref.: Dir. 3376R-A	
INMATE STATEMENT FORM					
Inmate's Name: <i>Landon Lamont Washington</i>		Book & Case #: <i>349 220 3269</i>		NYSID #:	
Facility: <i>G.R.V.C</i>		Housing Area: <i>9A</i>		Date of Incident: <i>on going</i>	
				Date Submitted: <i>1-19-23</i>	
All grievances must be submitted within ten business days after the incident occurred, unless it's a sexual abuse or harassment allegation. The inmate filing the grievance must personally prepare this statement. Upon collection by the Office of Constituent and Grievance Services (OCGS) staff, OCGS staff will time-stamp and issue it a grievance reference number. OCGS staff shall provide the inmate with a copy of this form as a record of receipt.					
Grievance: <i>I have not been able to attend religious services here at this facility. For the past 2 months for several weeks protestant services has not been afforded to me</i>					
Action Requested by Inmate: <i>Look into this matter so I can attend services. To be afforded my services.</i>					
Please read below and check the correct box:					
Do you agree to have your statement edited for clarification by OCGS staff?				Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	
Do you need the OCGS staff to write the grievance for you?				Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	
Have you filed this grievance with a court or other agency?				Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	
Did you require the assistance of an interpreter?				Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	
Inmate's Signature: <i>[Signature]</i>				Date of Signature: <i>1-19-23</i>	
FOR DOC OFFICE USE ONLY					
OCGS MUST PROVIDE A COPY OF THIS FORM TO THE INMATE AS A RECORD OF RECEIPT.					
THIS FORM IS INVALID UNLESS SIGNED BY THE INMATE AND GRIEVANCE COORDINATOR					
TIME STAMP <i>MAR 20 AM</i>		Grievance Reference # <i>621042</i>		Category: <i>Religious Services</i>	
		Office of Constituent and Grievance Services Coordinator/Officer Signature: <i>[Signature]</i>			

ATTACHMENT - C

	CITY OF NEW YORK - DEPARTMENT OF CORRECTION		
	OFFICE OF CONSTITUENT AND GRIEVANCE SERVICES		
	DISPOSITION FORM		
Grievance Reference #: 621042		Date Filed: 01/20/2023	Facility: GRVC - 9A
Inmate Name: Washington, Landon	Book and Case#: 3492203269 NYSID# 01930776N	Category: Religion	
<p>From OCGS Inmate Statement Form, print or type short description of grievance:</p> <p>I have not been able to attend religious services here at this facility. For several weeks protestant services have not been afforded to me.</p>			
<p>Action Requested by Inmate:</p> <p>Look into this matter So I can attend services. To be afforded my services.</p>			
STEP 1: FORMAL RESOLUTION			
<p>Check one box: <input checked="" type="checkbox"/> Grievance <input type="checkbox"/> Submission is not subjected to the Grievance Process</p> <p>The Office Of Constituent and Grievance Services proposes to formally resolve your grievance as follows below. Alternatively, OCGS staff shall provide an explanation for why the submission is not subject to the OCGS process. Grievances not subject to the Grievance Process cannot be appealed.</p> <p>OCGS reviewed and investigated this matter. It has been revealed that there are no protestant services at GRVC at this time. OCGS concludes this matter of no religious services to be substantiated. This "Religious services" complaint/concerns matter has also been forwarded to the Warden's office for investigation/resolution. No additional action required by OCGS .</p>			
CHECK THE APPROPRIATE BOX BELOW AND PROVIDE YOUR SIGNATURE <i>(Failure to sign forms will forgo your right to appeal the proposed resolution.)</i>			
<p><input type="checkbox"/> Yes, I accept the resolution <input checked="" type="checkbox"/> No <input type="checkbox"/> I request to appeal the resolution of this grievance to the Commanding officer.</p> <p><small>Note: If you appeal, the grievance staff can request for a preliminary based review if they feel the complaint was thoroughly investigated and addressed, prior to forwarding to the Commanding Officer. You will receive the outcome of this review within (3) business days to inform you the appeal will proceed or you exhausted administrative remedies. Grievance not subject to the Grievance Process cannot be appealed.</small></p>			
Inmate's Signature: 		Date: 1-20-23	
<input type="checkbox"/> Preliminary Review Requested			
Grievance Coordinator/Officer Signature: Mr. Parrie		Date: 01/20/2023	